

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

CHARLESTON

VIRGIL L. KINCAID,

Plaintiff,

v.

Case No. 2:08-cv-00193

FAYETTE COUNTY SHERIFF,  
FAYETTE COUNTY COURT, and  
[WEST VIRGINIA STATE POLICE],

Defendants.

PROPOSED FINDINGS AND RECOMMENDATION

On March 24, 2008, Plaintiff filed a document (docket # 1) which was interpreted as a complaint under 42 U.S.C. § 1983, alleging that various Fayette County and West Virginia State Police officials made erroneous entries in the records maintained by the Criminal Identification Bureau of the West Virginia State Police in connection with Plaintiff's criminal cases. On March 27, 2008, the court entered an Order and Notice (# 3), advising Plaintiff that, as written, his complaint did not appear to state a claim upon which relief can be granted. He was directed to file an amended complaint within 30 days, or the court would assume that he did not wish to pursue his claim. Plaintiff was also advised that he would be required to pay a filing fee of \$350, if the case went forward.

Since the entry of the March 27, 2008, Order and Notice, no additional activity has taken place in this case. Plaintiff has

not inquired as to the status of this case; in short, Plaintiff has failed to prosecute this civil action. There is nothing on the record to indicate that Plaintiff has not received the mail sent to him by the court.

The court notes that Plaintiff's habeas corpus action, Kincaid v. Ballard, No. 2:08-cv-00046 (S.D. W. Va.), is going forward.

For these reasons, the undersigned proposes that the presiding District Judge **FIND** that Plaintiff has wholly failed to prosecute this civil action. Accordingly, it is respectfully **RECOMMENDED** that the presiding District Judge **DISMISS** this matter without prejudice for failure to prosecute.

Plaintiff is notified that this Proposed Findings and Recommendation is hereby **FILED**, and a copy will be submitted to the Honorable Joseph R. Goodwin, Chief United States District Judge. Pursuant to the provisions of Title 28, United States Code, Section 636(b)(1)(B), and Rules 6(e) and 72(b), Federal Rules of Civil Procedure, Plaintiff shall have ten days (filing of objections), and then three days (service/mailing), from the date of filing this Proposed Findings and Recommendation within which to file with the Clerk of this Court, specific written objections, identifying the portions of this Proposed Findings and Recommendation to which objection is made, and the basis of such objection. Extension of this time period may be granted by the presiding District Judge for good cause shown.

Failure to file written objections as set forth above shall constitute a waiver of de novo review by the District Court and a waiver of appellate review by the Circuit Court of Appeals. Snyder v. Ridenour, 889 F.2d 1363 (4th Cir. 1989); Thomas v. Arn, 474 U.S. 140 (1985); Wright v. Collins, 766 F.2d 841 (4th Cir. 1985); United States v. Schronce, 727 F.2d 91 (4th Cir. 1984). Copies of such objections shall be served on opposing parties, Chief Judge Goodwin and this Magistrate Judge.

The Clerk is directed to file this Proposed Findings and Recommendation and to mail a copy of the same to Plaintiff.

September 17, 2008

Date

Mary E. Stanley  
Mary E. Stanley  
United States Magistrate Judge